

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAREN W. MARTHALER,

Plaintiff,

v.

Case Number 11-15315

Honorable David M. Lawson

Magistrate Judge Laurie J. Michelson

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT,
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,
VACATING THE DECISION OF THE COMMISSIONER,
AND REMANDING FOR FURTHER PROCEEDINGS

The plaintiff filed the present action on December 5, 2011 seeking review of the Commissioner's decision denying the plaintiff's application for a period of disability and disability insurance benefits under Title II and supplemental security income under Title XVI of the Social Security Act. On the same date, the case was referred to United States Magistrate Judge Laurie J. Michelson pursuant to 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1(b)(3). Thereafter, the plaintiff filed a motion for summary judgment to reverse the decision of the Commissioner and the defendant filed a motion for summary judgment to affirm the decision of the Commissioner. Presently before the Court is the report issued on October 1, 2012 by Judge Michelson pursuant to 28 U.S.C. § 636(b) recommending that the plaintiff's motion for summary judgment be granted in part, the defendant's motion for summary judgment be denied, and the case be remanded to the agency for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been

filed thus far. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt. #12] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion for summary judgment [dkt. #9] is **GRANTED IN PART** and the defendant's motion for summary judgment [dkt. #10] is **DENIED**.

It is further **ORDERED** that the findings of the Commissioner are **VACATED** and the case is **REMANDED** to the agency for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: October 24, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 24, 2012.

s/Deborah R. Tofil

DEBORAH R. TOFIL